

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 11, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT E. KOVACEVICH AND
YVONNE R. KOVACEVICH,
husband and wife,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO.: 2:24-CV-0217-TOR

ORDER GRANTING UNITED STATES'
MOTION TO DISMISS

BEFORE THE COURT is the United States' Motion to Dismiss. ECF No. 12. This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, the United States' Motion to Dismiss is granted.

BACKGROUND

The Plaintiffs and the WMI corporation "have been arguing over Mr. Kovacevich's employment status [with WMI] – and the implications of that status – for various tax periods over many years in multiple venues. Specifically, WMI

1 has consistently argued that it was not responsible for withholding or paying
2 federal taxes in connection with the services provided by Mr. Kovacevich on the
3 grounds that he was an independent contractor and was not employed by the firm
4 he owned and operated.

5 In 1999, the IRS had determined that WMI was liable for employment tax
6 deficiencies, plus penalties, for 1994 and the first quarter of 1995 because WMI
7 had improperly classified Mr. Kovacevich as an independent contractor rather than
8 an employee. WMI disputed the liabilities in Tax Court, which upheld the IRS's
9 determinations in a 2003 memorandum opinion. See *Western Mgmt. Inc.*, 2003
10 WL 21276359. The Tax Court held that Mr. Kovacevich was an employee
11 because WMI's board paid him a salary, and he filed IRS Form 940 with the
12 following language: "The amount of earnings of Employee Robert E. Kovacevich
13 was not clear, hence was left off. The Employee paid all Income Tax due, hence
14 the withholding is unnecessary." *Id.* at **4-5 (emphasis added). In addition, he
15 served as WMI's president and secretary-treasurer, solely worked in all significant
16 aspects of WMI's business, performed substantial services for WMI in his capacity
17 as an officer, and obtained remuneration for such services from WMI. *Id.* at *1.
18 For its part, WMI treated Mr. Kovacevich as an employee and failed to submit
19 information to the IRS consistent with his supposed independent contractor status.
20

1 *Id.* at *5. WMI therefore owed the employer share of employer taxes, plus
2 penalties, as the IRS would calculate. *Id.*

3 WMI then appealed the Tax Court decision to the Ninth Circuit Court of
4 Appeals. *See Western Mgmt. Inc. v. Comm’r of Internal Revenue*, 176 Fed. Appx.
5 778 (9th Cir. 2006). The Ninth Circuit upheld the 2003 Tax Court decision in all
6 respects except with regard to its calculations of the amount of income tax
7 withholding. *Id.* at 782. The Ninth Circuit remanded the case for consideration of
8 the narrow issue of whether the plaintiffs had paid personal income tax for Mr.
9 Kovacevich’s wages. *Id.* On remand, the Tax Court held that the plaintiffs had
10 paid all outstanding individual income tax liabilities related to wages paid to Mr.
11 Kovacevich in 1994 and the first quarter of 1995 and that the IRS could not collect
12 income tax withholding liabilities related to those wages. *See Western Mgmt. Inc.*
13 *v. Comm’r of Internal Revenue*, 2007 WL 2213747, at *2 (T.C. Aug. 2, 2007). The
14 Ninth Circuit affirmed the Tax Court’s decision on remand in *Western Mgmt. Inc.*
15 *v. Comm’r of Internal Revenue*, 314 F. Appx. 65 (9th Cir. 2009).

16 The next phase of the plaintiffs’ employment tax litigation began in 2008.
17 That year, the plaintiffs and WMI filed a suit in the Court of Federal Claims
18 seeking a refund of amounts previously paid by the plaintiffs and applied towards
19 WMI’s employment tax liabilities for the four quarters of 1994 and the first quarter
20 of 1995. *See Western Mgmt. Inc. v. United States*, 101 Fed. Cl. 105 (2011). As

1 part of a counterclaim, the United States sought to recover WMI's outstanding
2 employment tax liabilities from the plaintiffs for the same quarterly tax periods.
3 *See id.* at 107. The United States argued that Mr. Kovacevich, as the alter ego of
4 WMI, should be held personally liable for WMI's outstanding employment taxes
5 and that Mrs. Kovacevich should be held liable for Mr. Kovacevich's tax liability
6 under Washington community property law. *See id.* The Court of Federal Claims
7 agreed. It held that the United States was entitled to recover against the plaintiffs
8 for WMI's outstanding employment tax liabilities from 1994 and the first quarter
9 of 1995, totaling \$87,879.39 plus statutory interest. *Id.* at 121. The court further
10 held that the doctrine of res judicata with respect to the previous Tax Court
11 decision barred the plaintiffs from relitigating the issue of the appropriateness of
12 the IRS crediting WMI's tax account with prior payments made by the plaintiffs.
13 *Id.* at 115, 119.

14 Plaintiffs and WMI appealed to the Federal Circuit Court of Appeals which
15 upheld the decision in all respects, except for one, remanding the case to determine
16 whether the plaintiffs had previously received credits for the full amount of self-
17 employment taxes they paid for the four quarters of 1994 and the first quarter of
18 1995. *See Western Mgmt. Inc. v. United States*, 498 Fed. Appx. 10, 16 (Fed. Cir.
19 2012). On remand, the Court of Federal Claims held that the plaintiffs and WMI
20 had already received credit for the amounts that the plaintiffs self-assessed and

1 paid as self-employment taxes for Mr. Kovacevich for the quarterly tax periods at
2 issue. *See WMI v. United States*, 2013 WL 8182486, at *1 (Fed. Cl.
3 May 28, 2013). The amount of the United States’ counterclaim determined in
4 2011 was therefore correct and ready for collection. *Id.* The Federal Circuit
5 affirmed this decision in *Western Mgmt. Inc. v. United States*, 552 F. App.x 990
6 (Fed. Cir. 2014), *cert. denied*, 572 U.S. 1117 (2014).

7 The United States applied to the Eastern District of Washington District
8 Court to register the Court of Federal Claims judgment obtained against the
9 plaintiffs in 2011. *See Kovacevich v. United States*, Case No. 2:17-MC-00036-JTR
10 (E.D. Wash. Jul. 24, 2017) (ECF No. 1). Both Mr. and Mrs Kovacevich lodged
11 letters to the Court contesting the collection. After collection, the United States
12 filed notices of satisfaction of judgment with the ED of WA District Court in late
13 2022.

14 DISCUSSION

15 The doctrine of *res judicata* has been explained by the U.S. Supreme Court
16 as follows:

17 The preclusive effect of a judgment is defined by claim preclusion and issue
18 preclusion, which are collectively referred to as “*res judicata*.” Under the
19 doctrine of claim preclusion, a final judgment forecloses successive
20 litigation of the very same claim, whether or not relitigation of the claim
raises the same issues as the earlier suit. Issue preclusion, in contrast, bars
successive litigation of an issue of fact or law actually litigated and resolved
in a valid court determination essential to the prior judgment, even if the
issue recurs in the context of a different claim. By preclud[ing] parties from

1 contesting matters that they have had a full and fair opportunity to litigate,
2 these two doctrines protect against the expense and vexation attending
3 multiple lawsuits, conserv[e] judicial resources, and foste[r] reliance on
4 judicial action by minimizing the possibility of inconsistent decisions.

5 *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (alterations in original) (footnote
6 omitted) (citations and internal quotation marks omitted). “The elements necessary
7 to establish [claim preclusion] are: ‘(1) an identity of claims, (2) a final judgment
8 on the merits, and (3) privity between parties.’” *Headwaters Inc. v. U.S. Forest*
9 *Serv.*, 399 F.3d 1047, 1052 (9th Cir. 2005) (quoting *Tahoe-Sierra Pres. Council,*
10 *Inc. v. Tahoe Regional Planning Agency*, 322 F.2d 1064, 1077 (9th Cir. 2003)).
11 “[T]he doctrine of *res judicata* (or claim preclusion) ‘bar(s) all grounds for
12 recovery which could have been asserted, whether they were or not, in a prior suit
13 between the same parties. . . on the same cause of action.’” *Costantini v. Trans*
14 *World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (quoting *Ross v. IBEW*, 634
15 F.2d 453, 457 (9th Cir. 1980)).

16 In the present case, Plaintiffs are raising precisely the same claims that they
17 raised in the previous cases, are raising them against the same defendant, and are
18 raising them based on the same underlying factual allegations. They previously
19 lost all their arguments with multiple courts. Thus, *res judicata* applies.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**


2 1. The United States' Motion to Dismiss, ECF No. 12, is **GRANTED**.

3 2. This case is **DISMISSED** with Prejudice.

4 The District Court Clerk shall enter this Order and Judgment accordingly
5 and furnish copies to the parties. The file shall be **CLOSED**.

6 DATED December 11, 2024.



8 
THOMAS O. RICE
9 United States District Judge